

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL

74-2295

In The  
**United States Court of Appeals**

For The Second Circuit

FANNY HANDEL,

*Plaintiff-Appellee,*

vs.

MEYER GOLD,

*Defendant-Appellant,*

and

PREL CORPORATION,

*Defendant.*

*On Appeal from an Order from the United States District Court  
— Southern District of New York*

**APPENDIX**

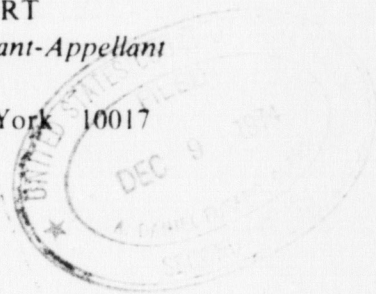
LAMPERT & LAMPERT

*Attorneys for Defendant-Appellant*

747 Third Avenue

New York, New York 10017

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## TABLE OF CONTENTS

	Page
Docket Entries . . . . .	1a
Notice of Motion . . . . .	4a
Affidavit of Irwin S. Lampert in Support of Motion . . . . .	5a
Letter From Abramson, Quittner & A- bramson Annexed to Foregoing Affidavit . .	7a
Affidavit of Meyer Gold in Support of Motion .	9a
Complaint . . . . .	10a
Answer . . . . .	13a
Plaintiff's Interrogatories . . . . .	16a
Order and Judgment of Dudley B. Bonsal, J., Entered October 26, 1973 . . . . .	21a
Notice of Attachment . . . . .	23a
Affidavit of Stanley L. Kaufman in Opposi- tion to Motion . . . . .	24a
Exhibits Annexed to Foregoing Affidavit of Stanley L. Kaufman:	
A - Plaintiff's Interrogatories (Printed herein at page 16a) . . . . .	33a

Contents

	Page
B - Letter From Kaufman & Kaufman Dated January 26, 1973 Requesting Extension of Time . . . . .	34a
C - Answer (Printed herein at page 13a) .	35a
D - Notice to Appear for Pretrial Con- ference . . . . .	36a
Plaintiff's Motion Papers Filed May 23, 1973 Including:	
E - Notice of Motion . . . . .	38a
- Affidavit of Stanley L. Kaufman . . .	40a
- Letter From Stanley L. Kaufman to William B. Kaufman . . . . .	43a
F - Notice of Settlement and Order Dated June 7, 1973 . . . . .	44a
Plaintiff's Motion Papers Dated October 5, 1973 Including:	
G - Notice of Motion . . . . .	47a
- Affidavit of Stanley L. Kaufman . . .	48a
- Clerk's Certificate of Default . . . .	50a

## Contents

	Page
H - Letter From Stanley L. Kaufman to Clerk of U.S. District Court, Southern District, Dated October 15, 1973 . . . .	52a
I - Notice of Settlement and Order Dated October 23, 1973 . . . . .	53a
J - Notice to Take Deposition Dated October 9, 1973 . . . . .	57a
K - Letter From Stanley L. Kaufman to Finkelstein, Benton and Soll, Dated October 24, 1973 . . . . .	60a
L - Letter From Stanley L. Kaufman to Finkelstein, Benton and Soll, Dated November 1, 1973 . . . . .	61a
M - Letter From Stanley L. Kaufman to Finkelstein, Benton and Soll Dated December 3, 1973 . . . . .	62a
N - Order of Judge Bonsal Entered Oct- ober 26, 1973 With Notice of Entry . . .	63a
O - Judgment Entered January 18, 1974 . .	67a
P - Postcard From Clerk's Office, U.S. District Court . . . . .	69a
Q - Notice to Take Deposition Dated February 6, 1974 . . . . .	70a

## Contents

	Page
R - Letter to Meyer Gold Dated February 6, 1974 . . . . .	72a
S - Postal Receipts . . . . .	73a
T - Certificate of Judgment . . . . .	74a
U - Letter From William B. Kaufman to Stanley L. Kaufman . . . . .	75a
V - Letter From Stanley L. Kaufman to William B. Kaufman . . . . .	76a
Affidavit of Stephen Sussman in Opposition to Motion . . . . .	77a
Scheduled Deposition of Meyer Gold . . . . .	79a
Report of Magistrate Jacobs Dated January 1, 1972 . . . . .	82a
Decision of Kevin T. Duffy, U.S. District Court Judge . . . . .	92a

# DOCKET ENTRIES

Fanny Handel vs. Meyer Gold & Prel Corp.

Bonsal, J. 72 CIV. 3901

Date	Proceedings
Sept. 12/72	Filed Complaint Issued Summons.
Oct. 6/72	Filed Stip & Order extending time to answer to complaint to 10/19/72 So Ordered Tenney J.
Oct. 20/72	Filed ANSWER of df.t Prel Corp.
Jan. 17/73	Filed Summons with marshal's ret. Served Meyer Gold by Mrs. Meyer Gold on 1/15/73.
Mar. 13/73	Filed ANSWER of deft Meyer Gold to the complaint.
May 30/73	Filed Notice of motion Ret. 5/29/73 at 4 p.m. Re: Striking Answer of deft Meyer Gold.
June 4/73	Filed MEMO-END, on motion dtd 5-30-73. Since there is no opposition motion is granted to the extent that deft Gold will answer the interrogs. on or before 6-29-73 or his answers will be stricken. Settle order on notice. BONSAL, J. (mn)
June 7/73	Filed Notice of Settlement and Order that the relief requested in said motion is granted unless deft Meyer Gold on or before 7-2-73 answer under oath and in writing, fully and fairly, each and every interr. propounded by pltff and dated 9-11-72 and served with summons and complaint. BONSAL, J. (mn)

Date	Proceedings
July 17/73	Filed Pltff's Affdvt of Stanley L. Kaufman.
Oct. 9/73	Filed Pltff's notice to take deposition of witness, Subp. issued
Oct. 26/73	Filed Order that judgment by default be entered for pltff on behalf, of the nominal deft. Prel Corp. An inquest be held before Magistrate Jacobs on 11-29-73 at 10 A.M. in room 1602 to determine, the amount of damages for which the pltff. shall have judgment & the amount of atty's fees to be awarded to pltff. against said deft. Bonsal, J. Judgment Ent. Clerk. m/n Ent. 10-29-73
Dec. 6/73	Filed pltff's notice of entry of order & judgment entered on 10-26-73
Dec. 19/73	PRE-TRIAL CONFERENCE HELD BEFORE MAGISTRATE JACOBS.
Jan. 9/74	Filed report of Magistrate Jacobs.
Jan. 9/74	Filed Memo-endorsed on report of Magistrate Jacobs: Magistrate Jacobs report dated 1-2-74 is approved & pltff is directed to submit a judgment in accordance with it to Magistrate Jacobs within ten days. Bonsal, J. Mailed Notice
Jan. 17/74	Filed JUDGMENT #74,082: Ordered that Prel Corp. recover from the deft. Meyer Gold the total amount of this judgment being \$169,000 with interest from the date of entry of this judgment & costs to be taxed. Pltff. Fanny Handel recover from

Date	Proceedings
	deft. Meyer Gold the costs of this action to be taxed. Bonsal, J. Judg. Ent. Clerk. Mailed notice.
Feb. 7/74	Filed plttf's notice to take deposition of deft.
Mar. 13/74	Filed plttf's affidavit & notice of motion granting attys fees ret. 3-25-74
July 25/74	Filed deft. Prel Corp.'s answering affdvt re: opposition to deft. Gold's notice of motion for default judgment.
July 25/74	Filed plttf's affdvt. in opposition to deft. Gold's motion for order vacating default judgmt.
July 25/74	Filed plttf's memo. of law in opposition to motion of deft. Gold.
July 29/74	Filed memo-end on motion dtd and filed this date. The motion to vacate the default judgment pursuant to Rule 60(b) FRCP is denied.
Aug. 26/74	Filed Deft. Meyer Gold's Notice of Appeal from order of Duffy, J. denying defts motion to vacate default judgment entered on 7/29/74. (mn to Borden & Ball Kaufman, Taylor, Kimmel & Miller on 8/27/74

NOTICE OF MOTION  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
FANNY HANDEL,

4a

NOTICE OF MOTION

Plaintiff,

- against -

72 Civ. 3901 (DBB)  
K.T.D.

MEYER GOLD and PREL CORPORATION

Defendants.

-----x  
S I R S :

PLEASE TAKE NOTICE that on July 24, 1974 at 2:15 p.m.  
in Room 506 of the United States District Courthouse, Foley Square,  
New York, New York, the defendant MEYER GOLD will move this Court  
before Honorable Kevin T. Duffy for an order (a) vacate and set  
aside the default judgment made and entered in the above entitled action  
on the grounds of mistake and excusable neglect pursuant to Rule 60(b)  
FRCP; (b) To stay all proceedings of every kind and character in  
connection with the enforcement of the judgment and to set aside and  
declare said judgment void and of no force and effect; (c) for such  
other and further relief as the Court may deem just and proper.

Dated: July 17, 1974  
New York, N. Y.

Yours etc.,

LAMPERT & LAMPERT  
Attorneys for Defendant, Meyer Gold

To:  
BORDEN & BALL  
Attorneys for defendant  
Prel Corporation  
345 Park Avenue  
New York, N.Y. 10022

By /s/  
A Member of the Firm  
747 Third Avenue  
New York, N.Y. 10017

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for plaintiff  
41 East 42nd Street  
New York, N. Y. 10017

AFFIDAVIT OF IRWIN S. LAMPERT IN SUPPORT OF MOTION  
UNITED STATES DISTRICT COURT  
SOUTHER DISTRICT OF NEW YORK

5a

-----x  
FANNY HANDEL,

Plaintiff,

- against -

MEYER GOLD and PREL CORPORATION

AFFIDAVIT  
72 Civ. 3901 (DBB)

Defendants.  
-----x

STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NEW YORK )

IRWIN S. LAMPERT, being duly sworn, deposes and says:

1) I am a member of the firm of LAMPERT & LAMPERT,  
attorneys for the Defendant, MEYER GOLD, herein.

2) This affidavit is for the purpose of obtaining an order to  
vacate and set aside a default judgment entered against the defendant,  
MEYER GOLD, on October 26, 1973.

3) The case was assigned to Hon. Dudley Bonzal who is  
on vacation until September, 1974, and because of the foregoing is being  
brought before Hon. Kevin T. Duffy, in Part 1 of this Court.

4) In June, 1974, U. S. Marshall in New Jersey attached  
property belonging to the defendant, at 181 River Road, Nutley, New  
Jersey, pursuant to the judgment entered in this matter.

5) If said property is sold pursuant to the attachment,  
irreparable harm may be caused to the defendant, MEYER GOLD.

6) This action arose under 16B of the Securities Act of  
1934.

7) The defendant appeared and answered by attorneys,  
FINKELSTEIN, BENTON & SOLL.

8) The default arose when the defendant failed to answer interrogatories requested by the plaintiff.

9) The failure to answer said interrogatories was due to a misunderstandsing on the part of the defendant.

10) The Firm of FINKELSTEIN, BENTON & SOLL, who represented the defendant, was dissolved in 1973.

11) The defendant, MEYER GOLD, has a meritorious defense in this action. (Copy of a letter from ABRAMSON, QUITTNER & ABRAMSON sets forth the facts in detail).

12) The defendant, MEYER GOLD, became aware of the judgment when they attached his property in June, 1974.

13) The defendant, MEYER GOLD, will obtain a Bond if necessary for the amount of the judgment and requests that the Court permit him to be heard and have his day in Court. He will promptly reply to all interrogatories and do everything possible to assist the Court in coming to a fair decision based upon the facts involved and the merits of the case.

14) It is respectfully requested that the default entered against MEYER GOLD be vacated and that the Plaintiff FANNY HANDEL, and the Marshall of the District of New Jersey stay all proceedings of every kind and character in connection with the enforcement of the judgment or decree entered by this Court and that said judgment and decree be set aside and declared void and of no force and effect.

/s/

IRVIN S. LAMPERT

SHIRLEY FISHMAN  
 Attorney at Law, State of New York  
 No. 14412994  
 County of New York  
 Court of Surrogate, March 30, 1975

7a

LETTER FROM ABRAMSON, QUITTNER & ABRAMSON ANNEXED TO  
FOREGOING AFFIDAVIT

ABRAMSON, QUITTNER & ABRAMSON  
CERTIFIED PUBLIC ACCOUNTANTS  
59 MAIN STREET  
WEST ORANGE, N.J. 07052

---

TELEPHONE 736-5700  
AREA CODE 201

February 2, 1973

Stanley L. Kaufman, Esq.  
Kaufman, Taylor, Kimmel and Miller  
41 East 42 Street  
New York, New York 10017

Re: Fanny Handel, Plaintiff v.  
Meyer Gold and Prel  
Corporation, Defendants

Dear Sir:

We have been asked to supply you with factual information relative to the disposition of 65,647 shares of Prel Corporation capital stock by our client, Meyer Gold, within a six month period from acquisition of such stock in alleged violation of Section 16(b) of the Securities Act of 1934.

The Facts

Meyer Gold and Jacob Burstyn were major and equal stockholders in a number of corporations which were acquired by the Prel Corporation on September 16, 1971.

The Prel Corporation issued 586,783 shares of their non-registered common stock for 100% of the capital stock

of the acquired companies.

Of the aforesaid 586,783 shares, Meyer Gold and Jacob Burstyn each received 255,647 shares and the minority stockholders received the balance of 75,489 shares.

Prior to the Prel acquisition, Meyer Gold had an agreement with Jacob Burstyn that he was to receive 200,000 shares of the Prel stock and Burstyn was to receive the balance of the Prel stock allocated to Burstyn and Gold.

However, tax counsel for Prel advised that it would be necessary to issue a proportionate number of shares to each of the stockholders of the acquired companies in order to accomplish a desired tax result.

Accordingly, in order to satisfy the tax lawyers, an equal number of shares were issued to Gold and Burstyn; Gold receiving two certificates of the Prel stock, one for 200,000 shares and another for 55,467 shares.

In accord with the pre-acquisition agreement with Burstyn, Gold, at the closing, immediately turned over to Burstyn the 55,467 shares which were issued in his name.

In summary, while the transfer books of Prel indicate a transfer from Gold to Burstyn of the said 55,467 shares, actually this transfer should be considered as a post-closing exchange based on a pre-closing agreement.

The 10,000 shares of Prel stock in question (65,467 minus 55,467 shares) is simply a gift of this stock without consideration by Meyer Gold to his brother-in-law, Oscar Steinberg.

Please feel free to write us if additional information is desired.

Very truly yours,

ABRAMSON, QUITTNER & ABRAMSON

JCA/ss

By: J.C. Abramson

## AFFIDAVIT OF MEYER GOLD IN SUPPORT OF MOTION

STATE OF NEW JERSEY }  
COUNTY OF UNION } SS:

MEYER GOLD, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am a defendant in an action which it was my understanding was to be primarily responded to by Prel Corporation and through New York counsel, it was my understanding that an Answer had been filed and that the examination of the books and records of Prel Corporation was going on.

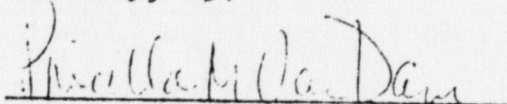
2. I received a notice for such examination and I was led to believe that the Prel Corporation officers with the subject matter thereof and that it was not necessary for me to attend.

3. I was further led to believe that these cases took a long time, indeed several years. I am now informed that without notice to me of any attempt or court proceeding without my knowledge, a judgment has been entered against me based upon the fact that I did not attend such hearings for questioning, which was only through mistake on my part and the honest belief that it was not required.

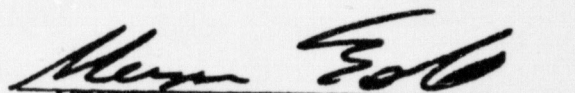
4. At the absolute fact that the claim that I received a profit, which is what they sued me for, is incorrect and false and there is a good and valid defense to such action which should be presented in fairness.

5. I respectfully point out that the amount involved is insignificant as to Prel and very significant and important as to the shareholders of Prel and very important to me because I must pay it all. I am ready to bond or otherwise as sure payment if I am wrong and respectfully beg and request the opportunity to have a fair trial and hearing, which I know will prove that I am right and that nothing is due from me.

Sworn and subscribed to  
before me this 16th day  
of July, 1974



PRISCILLA M. VAN DAM  
NOTARY PUBLIC OF NEW JERSEY

  
MEYER GOLD

COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

- - - - - x

Plaintiff, by Kaufman, Taylor, Kimmel & Miller,  
her attorneys, complaining of the defendants, for her  
complaint respectfully alleges upon information and  
belief:

1. This action arises under the provision of  
Section 16(b) of the Securities Exchange Act of 1934,  
as amended ("Act"), 15 U.S.C. §78p(b), and jurisdiction  
is conferred upon this Court under Section 27 of that  
Act, 15 U.S.C. §78aa.

2. Plaintiff is and has been since on or about  
March 21, 1972 the owner of common stock of PREL COR-  
PORATION ("Pre1") and brings this action on behalf and

for the benefit of Prel.

3. Prel is a Delaware corporation.

4. At all times referred to herein, the common stock of Prel was subject to regulation and governed by Section 16 of the Act.

5. The acts and transactions constituting the violations of Section 16(b) hereinafter alleged occurred in the Southern District of New York.

6. On or about September 16, 1971, Meyer Gold purchased at least 265,647 shares of Prel's common stock and became the beneficial owner of more than 10 percent of Prel's outstanding common stock.

7. Within a period of less than six months from said purchase Meyer Gold sold at least 65,647 shares of Prel common stock.

8. Meyer Gold thereby realized a profit, the amount thereof being unknown to plaintiff. Said profit inures to and is recoverable by Prel by virtue of the Act.

9. This action is not a collusive one to confer upon a Court of the United States jurisdiction of a

cause over which it would not otherwise have cognizance.

10. This suit is brought within two years after the date the said profit was realized.

11. On or about June 23, 1972 plaintiff's attorneys requested that defendant Prel take the action demanded in this complaint, but Prel has failed to bring suit within sixty days after such request.

WHEREFORE, plaintiff demands a judgment and decree as follows:

- (A) That defendant Meyer Gold pay over to Prel the amount of his profits with interest,
- (B) That plaintiff be awarded costs and disbursements, including reasonable counsel fees; and
- (C) That such other and further relief as the Court may deem proper in the premises be granted.

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for Plaintiff

By Stanley L. Kaufman  
A Member of the Firm  
41 East 42nd Street  
New York, New York 10017  
MU 2-2983

ANSWER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

- - - - - x

Defendant, Meyer Gold, by Finkelstein, Benton & Soll, his attorneys, answering the complaint, respectfully says:

1. The thrust of the action is cognizable under the Statute cited, but this defendant says that no such action lies in fact.

2. This defendant has no information sufficient to form a belief as to whether or not the plaintiff has ever been an owner of common stock of Prel Corporation and puts the plaintiff to its proof thereof.

3. This defendant admits that Prel Corporation is a Delaware corporation.

4. This defendant agrees that the Act cited governed the common stock of Prel Corporation.

5. This defendant denies that any of his acts or transactions were violations under Section 16(b) of the Act, as alleged.

6. This defendant denies that he purchased or ever held or owned, beneficially or otherwise, 265,647 shares of Prel's common stock.

7. This defendant denies that less than six months from any purchase he sold 65,647 shares of Prel's common stock, and further says that the only common stock of Prel sold by this defendant was sold consistent with and as part of a secondary offering made by the company upon proper filing, registration and disclosure pursuant to the Act, and in any event, more than six months after he acquired any of the stock of Prel.

8. This defendant denies that he made any profit as a result of any such sale, and further repeats that no such sale or sales as alleged ever took place.

9. This defendant agrees that it is not in collusion with any of the parties, but reserves as to possi-

ble collusion by the plaintiff and the defendant, Prel.

10. This defendant denies that this suit is brought within two years after any profit was realized, and repeats that no such sale as alleged ever took place and no profit was ever realized.

11. On information and belief, this defendant alleges that he is informed that such demand was made and rejected properly by Prel upon the grounds that the claim was not factually correct and that no such action did in fact lie, and that the claims of the plaintiff were without merit, factually or as a matter of law.

WHEREFORE, this defendant demands judgment as follows:

- (a) Dismissing the complaint of plaintiff;
- (b) for such other relief as may be just and proper;
- (c) and for counsel fees and cost.

FINKELSTEIN, BENTON & SOLL,  
Attorneys for Defendant  
Meyer Gold

BY \_\_\_\_\_

PLAINTIFF'S INTERROGATORIES

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(same Title)

PLAINTIFF'S INTERROGATORIES TO  
DEFENDANTS, SET NO.1

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff hereby requests that defendants serve upon plaintiff sworn answers to the interrogatories set forth below.

A. DEFINITIONS

1. As used herein, "document" includes any written, recorded or graphic matter however produced or reproduced, including, but not limited to, correspondence, telegrams, other written communications, contracts, agreements, notes, memoranda, analyses, recordings, projections, drafts, work papers, diaries, calendars, minutes of meetings of the board of directors or committees thereof or of the shareholders, or the partners of a defendant company or any of their subsidiaries, or of any committees

appointed by or reportable to them, or any other writings or recordings, including copies of any of the foregoing now in the possession, custody or control of a defendant company, or any of its subsidiaries, its merged or acquired predecessors, its present or former directors, officers, partners, counsel, agents, employees and all persons acting on its behalf.

2. As used herein, "identify" or "identity" used in reference to an individual person means to state his full name and present address, his present or last known position and business affiliation, and his position and business affiliation at the time in question. "Identify" or "identity", when used in reference to a document, means to state the date and author, type of document (e.g., letter, memorandum, telegram, chart, etc.), or some other means of identifying it, and its present location or custodian and a brief description of the subject matter thereof. In lieu of stating the subject matter a copy of the document may be furnished.

B. INSTRUCTIONS

1. To the extent that information sought by any interrogatory can be furnished by reference to the answer furnished to another interrogatory, such practice will be acceptable to plaintiff. However, separate answers should be accorded in all cases, and interrogatories should not be joined together and accorded a common answer.

2. Unless otherwise indicated, all interrogatories should be answered for the period of January 1, 1971 to March 30, 1972.

C. INTERROGATORIES  
TO BE ANSWERED BY  
BOTH DEFENDANTS

1. State separately as to each acquisition, direct or indirect, by Meyer Gold ("Gold") of shares of Prel, (and any right to acquire or contract relating to the acquisition of Prel shares) during the year 1971:

- (a) The time and place thereof.
- (b) The number of shares acquired (or contracted for).
- (c) The amount and nature of the consideration paid for such shares.

(d) The amount and nature of the consideration paid for any contractual right to acquire Prel shares.

(e) The date of payment thereof.

(f) The persons or entities from whom shares or rights thereto were acquired.

(g) The name in which acquired and whether Gold acquired record or beneficial ownership or both.

(h) Identify each document relating or referring to or evidencing items (a) through (g), above.

(i) Identify each person having any knowledge or information regarding any of items (a) through (h) above.

2. State separately as to each disposition, direct or indirect, by Gold of shares of Prel, (and any right to sell or dispose of or contract relating to the disposition of Prel shares) between January 1, 1971 and March 30, 1972.

(a) The time and place thereof.

(b) The number of shares disposed of (or contracted for disposition).

(c) The amount and nature of the consideration re-

ceived for such shares.

(d) The amount and nature of any consideration received by Gold for the transfer of any right to receive Prel shares.

(e) The date of receipt thereof.

(f) Identify the persons or entities to whom shares or rights thereto were transferred.

(g) Identify each document relating to or referring to or evidencing items (a) through (f) above.

(h) Identify each person having any knowledge or information regarding any of items (a) through (g) above.

D. TO BE ANSWERED BY PREL ONLY

3. State the number of shares of Prel common stock issued and outstanding on September 1, 1971 and the date and amount of any change in the number of said shares between September 1 and December 31, 1971.

Dated: New York, N.Y.

September 11, 1972.

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for Plaintiff

BY Stanley L. Kaufman  
A Member of the Firm SGD  
41 East 42nd Street  
New York, N.Y. 10017  
682-2983

ORDER AND JUDGMENT OF DUDLEY B. BONSALE, J., ENTERED OCTOBER 26, 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
FANNY HANDEL,

Plaintiff

72 Civ. 3901 (DBB)

-against-

ORDER

MEYER GOLD and PREL CORPORATION,

Defendants

Plaintiff having moved for an order pursuant to Rule 37(a) Fed. Rules of Civil Procedure striking defendant MEYER GOLD's Answer for his failure to answer plaintiff's interrogatories and directing said defendant to answer said interrogatories; and the court by order dated June 7, 1973 having entered an order granting the relief requested; and defendant GOLD having failed to serve or file answers to said interrogatories; and the Clerk of this Court having on October 5, 1973 certified said defendant's failure to answer said interrogatories, and plaintiff having moved on October 15, 1973 for (a) a judgment by default against said defendant; (b) an inquest to determine the amount of damages; and (c) an award of attorneys' fees to plaintiff pursuant to Rule 37, FRCP; and defendant GOLD having failed to appear upon the hearing of said motion on October 15, 1973;

NOW, upon the affidavit of STANLEY L. KAUFMAN, sworn to October 5, 1973; upon defendant, GOLD's failure to appear as aforesaid; and upon all prior proceedings herein; it is

ORDERED, that judgment by default be entered for plaintiff on behalf of the nominal defendant, PREL CORPORATION; and it is further

ORDERED, that an inquest be held before Magistrate Jacobs  
 on November 29, 1973  
 at 10 A.M., in Room 1602 of the United States District Court,  
 Foley Square, New York City, to determine the amount of damages  
 for which the plaintiff shall have judgment and the amount of  
 attorneys' fees to be awarded to plaintiff against said defendant,  
 pursuant to Rule 37, FRCP.

Dated: October 23, 1973.

New York, N.Y.

(SGN) Dudley B. Bonsal  
 U. S. D. J.

Judgement entered: Oct 26, 1973

Raymond F.  
 Burghardt,  
 Clerk

End of Order &  
 Judgement

Note to all parties:

The inquest has been adjourned  
 by Magistrate Jacobs until 10 AM.  
 December 19, 1973 Room 1602 Federal  
 Court House.

S.L. Kaufman

## NOTICE OF ATTACHMENT

Form No. USM-59  
(Ed. 4-13-57)

## PUBLIC NOTICE OF ATTACHMENT

## Office of the Marshal of the United States

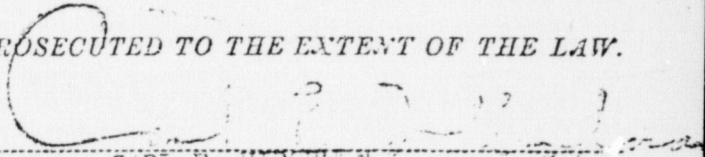
District of New JerseyJune \_\_\_\_\_, 19 74This 181 River Road, Nutley, N.J. having been attached by meand now being in my possession by virtue of a FI FA DE BONIS ET TERRISissued out of the District Court of the United States for the \_\_\_\_\_ District of New JerseyNOTICE IS HEREBY GIVEN that any person removing or attempting to remove said \_\_\_\_\_  
above mentioned property\_\_\_\_\_ without my written permission, or in any way interfering  
with said \_\_\_\_\_ above mentioned property \_\_\_\_\_ or my duly

authorized Deputy or Keeper in charge thereof, WILL BE PROSECUTED TO THE EXTENT OF THE LAW.

Fanny Handel

VS

Meyer Gold et al

  
CARL E. HIRSHMAN

U. S. Marshal.

Civil 74-20

AFFIDAVIT OF STANLEY L. KAUFMAN IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

72 Civ. 3901 (DBB)

AFFIDAVIT

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

STANLEY L. KAUFMAN, being duly sworn, deposes and says:

1. I am a member of the firm of KAUFMAN, TAYLOR, KIMMEL & MILLER, attorneys for the plaintiff herein, and make this affidavit in opposition to defendant GOLD's motion to vacate a default judgment entered against him on January 17, 1974.

2. This action was commenced in September 1972 for the benefit of the nominal defendant PREL CORPORATION. I am advised that PREL also resists defendant's groundless motion to set aside the default judgment.

3. It took the U. S. Marshal until January 15, 1973 to serve GOLD since, the latter appeared to be evading service of the summons and complaint. Plaintiff's interrogatories were served together with the complaint personally upon GOLD. GOLD has been in default in answering said interrogatories since April 1973 despite repeated oral and written admonitions of plaintiff's counsel and despite several motions to require his adherence to

court rules and orders. Since April 1973, he has wilfully flouted repeated orders of Judge Bonsal. It will be clear from a recital of the facts and an examination of the record in this case that GOLD's conduct has been contumacious and wilfull.

4. The plaintiff's interrogatories which were served upon GOLD on January 15, 1973, are annexed hereto as Exhibit "A". Thereafter, on January 26, 1973, GOLD's New Jersey attorneys, Kaufman and Kaufman, requested an extension of time to answer until February 25, 1973, which was granted (Exhibit "B").

5. On March 12, 1973, we were served with GOLD's answer by Finkelstein, Benton & Soll (hereinafter "Finkelstein") GOLD's New York attorneys. (Exhibit "C").

6. On April 13, 1973, I called the Finkelstein office to advise them of their default in answering the interrogatories. I telephoned them to a similar effect on at least one other occasion thereafter. In April 1973, the parties were served with notice to appear on May 29, 1973 before Judge Bonsal, at 4:00 P.M. in room 519 for a pretrial conference to fix a trial date (Exhibit "D").

7. On May 23, 1973, plaintiff filed motion papers for an order striking GOLD's answer, and directing that the interrogatories be answered. This motion was made returnable simultaneously with the pretrial conference before Judge Bonsal (Exhibit "E").

8. At the hearing, on May 29, 1973, which was completely ignored by GOLD's New Jersey and New York attorneys, Judge Bonsal

directed that we submit an order upon notice striking GOLD's answer "unless defendant MEYER GOLD, on or before July 2, 1973, answer under oath and in writing, fully and fairly, each and every interrogatory propounded by the plaintiff and dated September 11, 1972 and served with the summons and complaint herein" (Exhibit "F").

9. GOLD and his attorneys ignored the aforesaid proposed order and notice of settlement which was signed by Judge Bonsal on June 7, 1973. Since no answers were received from GOLD, who completely ignored Judge Bonsal's June 7th order, it became necessary to make a motion to again move before Judge Bonsal, this time, for a judgment by default against GOLD; for an inquest and for other relief.

10. On October 15, 1973, a hearing was held before Judge Bonsal which was again ignored by GOLD and his attorneys although the motion papers (Exhibit "G") had been served on Finkelstein. At that hearing, Judge Bonsal directed that a proposed order with notice of settlement be served on the defendants. See letter dated October 15, 1973 (Exhibit "H").

11. Thereafter, a proposed order for judgment by default and an inquest and other relief was served on Finkelstein with notice of settlement. Judge Bonsal set the inquest before Magistrate Jacobs, on November 29, 1973 (adjourned until December 19, 1973) (Exhibit "I"). Once again GOLD and his attorneys completely ignored the proposed order and notice of settlement.

12. Meanwhile, on October 17, 1973, Finkelstein was

served with a notice to take the deposition of PREL CORPORATION and its Chief Executive Officer (Exhibit "J"). These depositions were adjourned twice and on each occasion letters were written by plaintiff's counsel to GOLD's counsel, Finkelstein (Exhibit "K" and Exhibit "L").

13. Further, by letter of December 3, 1973 to Finkelstein, plaintiff's counsel advised GOLD's counsel, for the second time that an inquest would take place before Magistrate Jacobs, on December 19, 1973 (Exhibit "M"). GOLD's attorney paid absolutely no attention either to Judge Bonsal's formal order of inquest or to the subsequent letter advising of the inquest.

14. Judge Bonsal's order directing an inquest was served with notice of entry on Finkelstein, on December 5, 1973 (Exhibit "N").

15. On December 19, 1973, a hearing was held before Magistrate Jacobs in which testimony and exhibits were received in evidence, and on January 2, 1974 Magistrate Jacobs filed his report recommending the entry of judgment for plaintiff in the amount of \$150,000, together with interest at six per cent from January 1, 1972.

16. On January 8, 1974, Judge Bonsal approved Magistrate Jacob's report and directed plaintiff to submit a judgment.

17. On January 18, the Clerk entered a judgment against GOLD which had been signed by Judge Bonsal on January 17, 1974 (Exhibit "O").

18. The plaintiff was advised of the entry of Judgment No 74.082 by postcard from the Clerk (Exhibit "P"). Presumably,

all other attorneys received similar notification. On February 6, plaintiff served a notice to take the deposition of GOLD. on February 21, 1974 "in aid of the judgment against said MEYER GOLD entered January 18, 1974.." (emphasis supplied). This notice to take deposition was served upon Finkelstein and by registered mail upon GOLD (Exhibit "Q"). The notice to take GOLD's deposition was accompanied by a letter dated February 6, 1974 (Exhibit "R"). Return receipts were forwarded by GOLD and/or his wife (Exhibit "S").

19. Thereafter, GOLD defaulted at his deposition, which was for the purpose of discovering assets and it became necessary for plaintiff's attorneys to search for assets in the State of New Jersey.

20. Thereafter, the judgment of the District Court for the Southern District of New York was certified by the Clerk for registration in another district and was registered in the United States District Court for the District of New Jersey (Exhibit "T")

21. A New Jersey attorney was retained by the plaintiff to execute on certain real estate owned by GOLD in the State of New Jersey. GOLD apparently owns a multi-million dollar apartment complex at 181 River Road, Nutley, New Jersey. When this property was attached this was the first time that GOLD paid any attention whatsoever to any orders of this court or indicated the slightest intention to comply with same.

22. As stated above, if this judgment is permitted to be opened under Rule 60(b) FRCP then, any default judgment no matter how wilfull and contumacious may be reopened. GOLD has

wilfully imposed upon this court, upon Judge Bonsal and upon Magistrate Jacobs-not to mention the attorneys for the plaintiff and the attorneys for PREL-since March of 1973.

23. Although GOLD and his attorneys knew that judgment had been entered against GOLD on January 18, 1974, they permitted the time to appeal to expire and didn't even bother to attempt to open the judgment until the current motion made six months later.

24. Even the present motion fails to comply with the requirements of Rule 60(b) in that:

(a) The repeated contempts of Judge Bonsal and disregard of his orders and of the Federal Rules are neither explained nor excused, nor can they be in view of the astonishing recital of facts above.

(b) The statement is made by GOLD's present attorney, presumably as an excuse that "the Firm of Finkelstein, Benton & Soll, who represented the defendant, was dissolved in 1973". There is no further explanation nor can there be. If the frequent dissolutions of law firms excuses compliance with court orders and the Federal Rules, the practice of law and administration of justice would be a shambles.

(c) The sole excuse given for failure to answer the interrogatories is that it "...was due to a misunderstandsing (sic) on the part of the defendant." What the misunderstanding was is never explained except that it is suggested by GOLD that he thought

that PREL was defending the case for him.

This is incredible on its face because PREL filed an answer in which it took no position on GOLD's liability and stated that it "...submits its rights and interests in the matter in controversy in this action to the protection of the court." Furthermore, the repeated documents and orders of Judge Bonsal served upon GOLD and his attorneys made it clear to any reasonable human being that GOLD was required to protect his interests as the only defendant in the litigation. GOLD gives no particulars of his "misunderstandings", or who was responsible therefor.

(d) GOLD gives no credible explanation of his failure to make his motion to open the default for a period of six months from the entry of judgment and after the time to appeal had expired; nor is there any conceivable explanation for his failure to respond to the supplementary proceedings which were received by him personally in February 1974 as well as by his attorney.

(e) Nor does he indicate by any proof worthy of consideration that he has a substantial defense to the merits of the action. GOLD imposes upon the court by submitting a letter dated February 2, 1973 from a firm of accountants addressed, but never sent, to plaintiff's attorneys (annexed to defendant's motion papers). On March 13, 1973, GOLD's attorney

tried to persuade plaintiff's attorneys that GOLD had made no profits based upon a "certification" from the accountant who acted for GOLD (Exhibit "U" annexed hereto). Presumably, the accountant's letter of February 2, 1973 is the "certification" referred to. On March 15, 1973, plaintiff's attorney responded to defendant's attorney refusing to take the accountant's representation which involved legal and factual conclusions, and insisted upon answers to the interrogatories and production of basic documents (Exhibit "V" annexed hereto).

(f) Plaintiff's accompanying memorandum of law will demonstrate that defendant's record of consistent defaults and of unexplained conduct violates practically every requirement found in the case law interpreting Rule 60(b) and the relief from default judgments thereunder.

(g) It is suggested that defendant GOLD who is a wealthy man, represented by two sets of counsel (he received \$560,000 in March 1972 on a secondary sale of PREL stock; he still owns 175,000 shares of PREL and a multi-million dollar housing development) has been making a mockery of this Court and the plaintiff's counsel since March 1973 and is a "law unto himself".

25. It is respectfully requested that GOLD's motion to

vacate the default be denied in all respects.

*Stanley L. Kaufman*

Stanley L. Kaufman

Sworn to before me this 24<sup>th</sup> day  
of July, 1974.

*Regina V. Sosinski*

REGINA V. SOSINSKI  
Notary Public, State of New York  
No. 41-0111054  
Qualified in Queens County  
Commission Expires March 30, 1975

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT  
OF STANLEY L. KAUFMAN

33a

EXHIBIT A - PLAINTIFF'S INTERROGATORIES

(Printed herein at page 16a)

EXHIBIT B-LETTER FROM KAUFMAN & KAUFMAN DATED JANUARY  
26, 1973 REQUESTING EXTENSION OF TIME

KAUFMAN AND KAUFMAN  
COUNSELLORS AT LAW  
HERSH TOWER BUILDING  
ELIZABETH, N.J. 07201  
(201) 355-8050

AARON KAUFMAN  
WILLIAM B. KAUFMAN  
RICHARD M. SALSBERG  
MEYER L. ROSENTHAL  
AVRAM S. EULE

January 26, 1973

Stanley L. Kaufman, Esq.  
Kaufman, Taylor, Kimmel & Miller, Esqs.  
41 East 42nd Street  
New York, New York 10017

RE: FANNY HANDEL vs. MEYER GOLD and PREL CORPORATION  
Civil Action File no. 72 Civ. 390  
(K&K File #5891-F)

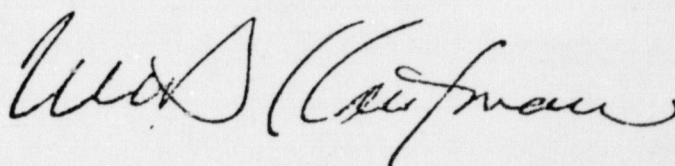
Dear Mr. Kaufman:

Consistent with our extended telephone conference of January 25, 1973, we confirm that the time for answer is extended until February 25, 1973. Please be good enough to return to us the copy enclosed with your signature endorsed thereon, as you suggested.

Very truly yours,

KAUFMAN and KAUFMAN

WBK/cnd  
Enclosures  
cc: Mr. Meyer Gold



CONTENTS CONFIRMED:

KAUFMAN, TAYLOR, KIMMEL & MILLER

By: S L K  
Stanley L. Kaufman

35a

EXHIBIT C - ANSWER

(Printed herein on page 13a)

EXHIBIT D-NOTICE TO APPEAR FOR PRETRIAL CONFERENCE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Kaufman, Taylor, Kimmel  
41 East 42nd Street  
New York City, N.Y. 10017

- - - - - x

(same title)

- - - - - x

The above entitled action is assigned to Judge Bon-  
sal for all purposes including the following:

- (1) Motions
- (2) Pre-trial proceedings
- (3) Trial

All papers to be filed in this action are to be  
filed in the Clerk's Office, with the exception or mo-  
tions, which shall be presented directly to the assigned  
judge.

All future documents filed in this action are to  
have the assigned judge's initials after the docket num-  
ber.

37a

The attorneys in this action are to appear on May 29, 1973 at 4 p.m. in room 519, for a pre-trial conference to fix a trial date or reach a disposition thereof.

Dated: New York, N.Y.

By Order of the Court

John Livingston, Clerk

By: C.J. Wallace  
Deputy Clerk

PLAINTIFF'S MOTION PAPERS FILED MAY 23, 1973  
INCLUDING:

## EXHIBIT E - NOTICE OF MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

-----X

:

:

:

:

:

72 Civ. 3901 (DBB)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that on May 29, 1973 at 4:00 P.M. in Room 519 of the United States District Courthouse, Foley Square, New York City, the plaintiff will move this Court before HONORABLE DUDLEY B. BONSAI for an order pursuant to Rule 37(d) Federal Rules of Civil Procedure (1) striking the Answer of defendant MEYER GOLD for failure to answer Interrogatories propounded by plaintiff pursuant to Rule 33 Federal Rules of Civil Procedure; and/or (2) directing that said Interrogatories be answered pursuant to Rule 37(a) Federal Rules of Civil Procedure; and (3) for such other and further relief as the Court may deem just and proper.

Dated: May 23, 1973  
New York, N.Y.

Yours, etc.,

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for Plaintiff

By Stanley L. Kaufman

A Member of the Firm

41 East 42nd Street

New York, N.Y.

Tel.: 682-2983

TO:

FINKELSTEIN, BENTON & SOLL  
Attorneys for Defendant  
Meyer Gold  
515 Madison Avenue  
New York, N. Y. 10022

BORDEN & BALL  
Attorneys for Defendant  
Prel Corporation  
345 Park Avenue  
New York, N. Y. 10022-

## EXHIBIT E - AFFIDAVIT OF STANLEY L. KAUFMAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
FANNY HANDEL;

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

72 Civ. 3901 (DBB)

AFFIDAVIT

STATE OF NEW YORK )  
: S.S.:  
COUNTY OF NEW YORK-)

STANLEY L. KAUFMAN, being duly sworn deposes and  
says:

I am a member of the firm of Kaufman, Taylor, Kimmel  
& Miller attorneys for plaintiff herein and am familiar with the  
facts and proceedings herein.

This affidavit is made in support of a motion pursuant  
to Rule 37 Federal Rules of Civil Procedure to compel answers to  
Interrogatories served by plaintiff with the Summons and Com-  
plaint upon the defendant, MEYER GOLD, on January 15, 1973. A  
copy of the Complaint and Interrogatories is annexed hereto. Also  
annexed hereto is a copy of our letter dated March 15, 1973 re-  
minding defendant's attorneys of his obligation to answer our  
Interrogatories. We also made at least two telephone calls to  
defendant's New York City attorneys requesting answers to the  
Interrogatories in the hope of avoiding this Motion.

Accordingly, plaintiff respectfully requests an order directing answer to the Interrogatories or that defendant's answers be stricken and for such other or further relief that the Court may deem proper.

*Stanley L. Kaufman*

STANLEY L. KAUFMAN

Sworn to before me this

23rd day May, 1973.

*Imogene Smith*

IMOGENE SMITH  
Notary Public in and for New York  
No. 31 0009015  
Qualified in New York County  
Commission Expires March 30, 1974

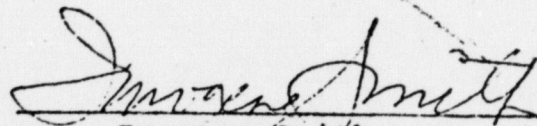
STATE OF NEW YORK )  
                               : S.S.:  
 COUNTY OF NEW YORK )

Imogene Smith, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 51 West 86 Street, New York, N. Y. 10024. That on the 23rd day of May, 1973 deponent served the within Notice of Motion and Affidavit upon the attorneys listed below at their respective addresses, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

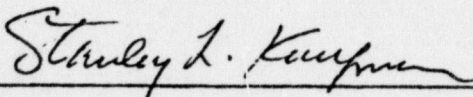
TO:

FINKELSTEIN, BENTON & SOLL  
 Attorneys for Defendant Meyer Gold  
 515 Madison Avenue  
 New York, N. Y. 10022

BORDEN & BALL  
 Attorneys for defendant Prel Corporation  
 345 Park Avenue  
 New York, N. Y. 10022

  
 Imogene Smith

Sworn to before me this  
 23rd day of May, 1973.



STANLEY L. KAUFMAN  
 Notary Public, State of New York  
 No. 81-710239  
 Commission Expires March 20, 1974

EXHIBIT E-LETTER FROM STANLEY L. KAUFMAN  
TO WILLIAM B. KAUFMAN

March 15, 1973

William B. Kaufman, Esq.  
Kaufman and Kaufman  
Hersh Tower Building  
Elizabeth, New Jersey 07201

March 13, 1973

Re: Handel v. Meyer Gold and Prol Corp.  
72 Civ. 3901 - K&K File 5891-F

Dear Mr. Kaufman:

In answer to yours of March 13, 1973, it is our experience that in practically every 16(b) case the defendant and his accountants seem to believe they made no 16(b) profit. Accountants are not qualified to make 16(b) determinations.

After Mr. Gold has provided factual answers to the interrogatories attached to the complaint and given us copies of basic documents, we may be in a position to determine whether or not he has any liability.

Yours truly,

STANLEY L. KAUFMAN

Stanley L. Kaufman

SLK/is

cc: Mr. Gold

## EXHIBIT F-NOTICE OF SETTLEMENT AND ORDER DATED JUNE 7, 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendant.  
-----x

: NOTICE OF SETTLEMENT

: 72 Civ. 3901 (DBB)

S I R S :

PLEASE TAKE NOTICE that an order of which the within is a true copy will be presented for settlement before the Honorable Dudley B. Bonsal, at 10:00 A.M., on the 6th day of June, 1973, at the United States District Courthouse, Foley Square, New York 10007.

Dated: May 31, 1973  
New York, New York

Yours etc.,

KAUFMAN, TAYLOR, KIMMEL  
& MILLER  
Attorneys for plaintiff

TO:

FINKELSTEIN, BENTON & SOLL  
Attorneys for defendant,  
Meyer Gold  
515 Madison Avenue  
New York, N.Y. 10022

BORDEN & BALL  
Attorneys for defendant,  
Prel Corporation  
345 Park Avenue  
New York, N. Y. 10022

KAUFMAN & KAUFMAN  
Herish Tower Building  
Elizabeth, New Jersey 07201

By 121  
A Member Of The Firm  
41 E. 42nd Street  
New York, N.Y.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

72 Civ. 3901 (DSB)

ORDER

ASSIGNED TO JUDGE BONSAI

-----x

Plaintiff having moved for an order pursuant to Rule 37(d) Federal Rules of Civil Procedure (1) striking the Answer of defendant MEYER GOLD for failure to answer Interrogatories propounded by plaintiff pursuant to Rule 33 Federal Rules of Civil Procedure; and/or (2) directing that said Interrogatories be answered pursuant to Rule 37(a) Federal Rules of Civil Procedure; and (3) for such other and further relief as the Court may deem just and proper and said motion having come on for hearing before HONORABLE DUDLEY B. BONSAI, on May 29, 1973, and defendant MEYER GOLD having consented thereto,

NOW, upon the affidavit of STANLEY L. KAUFMAN, sworn to May 23, 1973, and the pleadings and proceedings herein; it is

ORDERED, that the relief requested in said motion be and the same hereby is granted unless defendant MEYER GOLD, on or before July 2, 1973, answer under oath and in writing, fully and fairly, each and every interrogatory propounded by the plaintiff and dated September 11, 1972 and served with summons and complaint herein.

Dated: June 7, 1973.

SGD DUDLEY B. BONSAI  
U. S. D. J.

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

ENNA PADIN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 41-21 68th Street, Woodside, New York 11377. That on the 31st day of May, 1973 deponent served the within Order with Notice of Settlement upon the attorneys listed below at their respective addresses, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository maintained at 41 East 42nd Street, New York, N.Y., 10017 under the exclusive care and custody of the United States Post Office Department within the State of New York.

FINKELSTEIN, BENTON & SOLL  
Attorneys for defendant,  
Meyer Gold  
515 Madison Avenue  
New York, N.Y. 10022

BORDEN & BALL  
Attorneys for defendant,  
Prel Corporation  
345 Park Avenue  
New York, N.Y. 10022

KAUFMAN & KAUFMAN, Attys. for Meyer Gold  
Hersh Tower Building  
Elizabeth, New Jersey 07201

Sworn to before me this  
31st day of May, 1973.

Stanley L. Kaufman

STANLEY E. BROTHMAN  
Notary Public, State of New York

Contract: In the State of Georgia  
Contract: In the State of Georgia

PLAINTIFF'S MOTION PAPERS DATED OCTOBER 5, 1973  
INCLUDING:

## EXHIBIT G - NOTICE OF MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
FANNY HANDEL,

Plaintiff

-against-

MEYER GOLD and PREL CORPORATION,

Defendants  
-----x

NOTICE OF MOTION

72 Civ. 3901 (DBB)

S I R S :

PLEASE TAKE NOTICE that on October 15, 1973, at 9:30 A.M. in Room 1506 of the United States District Courthouse, Foley Square, New York City the plaintiff will move this court before Honorable Dudley B. Bonsal for (a) a judgment by default against the defendant, MEYER GOLD, pursuant to Rule 55, FRCP; (b) for an inquest or hearing before the Court or a Magistrate thereof to determine the amount of damages; (c) an award of attorney's fees to plaintiff pursuant to Rule 37, FRCP; (d) for such other and further relief as the Court may deem just and proper.

Dated: October 5, 1973  
New York, N.Y.

Yours etc.,

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for plaintiff

TO:

BORDEN & BALL  
Attorneys for defendant  
Prel Corporation  
345 Park Avenue  
New York, N.Y. 10022

FINKELSTEIN, BENTON & SOLL  
Attorneys for defendant  
Meyer Gold  
515 Madison Avenue  
New York, N. Y. 10022

by Stanley I. Kaufman  
A Member Of The Firm  
41 East 42nd Street  
New York, N. Y. 10017

EXHIBIT G - AFFIDAVIT OF STANLEY L. KAUFMAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
FANNY HANDEL,

Plaintiff

-against-

AFFIDAVIT

72 Civ. 3901 (DBB)

MEYER GOLD and PREL CORPORATION,

## Defendants

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

STANLEY L. KAUFMAN, being duly sworn, deposes and says:

1. I am a member of the firm of KAUFMAN, TAYLOR, KIMMEL & MILLER, attorneys for the plaintiff herein.

2. This affidavit is for the purpose of obtaining the entry of a default against the defendant, MEYER GOLD, pursuant to Rule 55, FRCP.

3. Interrogatories were served by plaintiff on defendant MEYER GOLD on or about January 15, 1973. In March, 1973 we wrote defendant's attorneys reminding them of their obligation and made at least two telephone calls to them for the same purpose. On May 29, 1973 we moved for an order striking GOLD's answer and/or directing that he answer the interrogatories. By order entered June 7, 1973 Judge Bonsal granted plaintiff's motion unless GOLD answered the interrogatories on or before July 2, 1973..

4. No answers to plaintiff's interrogatories (which were appended to the complaint) have yet been served upon us. The Clerk's Certificate of Default is attached hereto.

5. It is respectfully requested that a default be entered against defendant, MEYER GOLD, that the amount of damages be determined by a hearing before the court or a Magistrate and that attorneys' fees be awarded to plaintiff's attorneys pursuant to Rule 37, FRCP.

*Stanley L. Kaufman*

Stanley L. Kaufman

Sworn to before me this

5th day of October, 1973.

*Regina V. Sosinski*

REGINA V. SOSINSKI  
Notary Public, State of New York  
No. 41-8111054  
Qualified in Queens County  
Commission Expires March 30, 1974

## EXHIBIT G-CLERK'S CERTIFICATE OF DEFAULT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
FANNY HANDEL,

Plaintiff

-against-

MEYER GOLD and PREL CORPORATION,

Defendants  
-----xCLERK'S CERTIFICATE OF  
DEFAULT

72 Civ. 3901 (DBB)

The Clerk of this Court hereby certifies that he has examined the docket of the above case and that there is no entry that defendant MEYER GOLD has filed answers to plaintiff's interrogatories, and that said defendant is accordingly in default.

*Raymond F. Bingham*  
Clerk

Dated: New York, N. Y.  
October 5, 1973

STATE OF NEW YORK )  
 )  
 COUNTY OF NEW YORK )

ENNA PADIN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 83-20 Britton Avenue, Elmhurst, New York. That on the      day of October, 1973, deponent served the within Motion For Default Judgment upon the attorneys listed below at their respective addresses, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository maintained at 41 East 42nd Street, New York, New York 10017 under the exclusive care and custody of the United States Post Office Department within the State of New York

BORDEN & BALL  
 Attorneys for defendant  
 Prel Corporation  
 345 Park Avenue  
 New York, N. Y. 10022

FINKELSTEIN, BINTON & SOLL  
 Attorneys for defendant  
 Meyer Gold  
 515 Madison Avenue  
 New York, N.Y. 10022

*Enna Padin*

Sworn to before me this

5th day of October, 1973.

*Regina V. Sosinski*

REGINA V. SOSINSKI  
 Notary Public, State of New York  
 No. 41-9111034  
 Qualified in Queens County  
 Commission Expires March 30, 1974

EXHIBIT H-LETTER FROM STANLEY L. KAUFMAN TO CLERK OF  
U.S. DISTRICT COURT, SOUTHERN DISTRICT, DATED  
OCTOBER 15, 1973

October 15, 1973

Clerk  
United States District Court  
Southern District of New York  
Foley Square  
New York, N. Y. 10007

Re: Fanny Handel v. Meyer Gold and  
Prel Corporation - 72 Civ. 3901 (DBB)

Dear Sir:

As per instructions of Judge Bonsal at today's hearing of this motion, enclosed is proposed order with notice of settlement before Judge Bonsal, on October 22, 1973.

Will you please docket same and submit it to Judge Bonsal.

Very truly yours,

KAUFMAN, TAYLOR, KIMMEL & MILLER

by

Stanley L. Kaufman

SLK:ep  
Encl.

cc: Judge Dudley B. Bonsal

EXHIBIT I - NOTICE OF SETTLEMENT AND ORDER DATED  
OCTOBER 23, 1973

53a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
FANNY HANDEL,

Plaintiff

-against-

MEYER GOLD and PREL CORPORATION,

Defendants  
-----x

NOTICE OF SETTLEMENT

72 Civ. 3901 (DBB)

S I R S :

PLEASE TAKE NOTICE that an order of which the within is  
a true copy will be presented for settlement before the Honorable  
Dudley B. Bonsal, at 10:00 A.M., on the 22nd day of October, 1973,  
at the United States District Courthouse, Foley Square, New York  
10007.

Dated: October 15, 1973  
New York, N.Y.

Yours etc.,

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for plaintiff.

TO:

FINKELSTEIN, BENTON & SOLL  
Attorneys for defendant,  
Meyer Gold  
515 Madison Avenue  
New York, N. Y. 10022

by Stanley L. Kaufman  
A Member Of The Firm  
41 E. 42nd Street  
New York, N. Y.

BORDEN & BALL  
Attorneys for defendant,  
Prel Corporation  
345 Park Avenue  
New York, N.Y. 10022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
FANNY HANDEL,

Plaintiff

72 Civ. 3901 (DBB)

-against-

ORDER

MEYER GOLD and PREL CORPORATION,

Defendants

Plaintiff having moved for an order pursuant to Rule 37(d) Fed. Rules of Civil Procedure striking defendant MEYER GOLD's Answer for his failure to answer plaintiff's interrogatories and directing said defendant to answer said interrogatories; and the court by order dated June 7, 1973 having entered an order granting the relief requested; and defendant GOLD having failed to serve or file answers to said interrogatories; and the Clerk of this Court having on October 5, 1973 certified said defendant's failure to answer said interrogatories, and plaintiff having moved on October 15, 1973 for (a) a judgment by default against said defendant; (b) an inquest to determine the amount of damages; and (c) an award of attorneys' fees to plaintiff pursuant to Rule 37, FRCP; and defendant GOLD having failed to appear upon the hearing of said motion on October 15, 1973;

NOW, upon the affidavit of STANLEY L. KAUFMAN, sworn to October 5, 1973; upon defendant, GOLD's failure to appear as aforesaid; and upon all prior proceedings herein; it is

ORDERED, that judgment by default be entered for plaintiff on behalf of the nominal defendant, PREL CORPORATION; and it is further

ORDERED, that an inquest be held before Magistrate Jacobs  
 on November 29, 1973  
 at 10 A.M. in Room 1602 of the United States District Court,  
 Foley Square, New York City, to determine the amount of damages  
 for which the plaintiff shall have judgment and the amount of  
 attorneys' fees to be awarded to plaintiff against said defendant,  
 pursuant to Rule 37, FRCP.

Dated: October 23, 1973.

New York, N.Y.

(SGD) Dudley B. Bonsal  
 U. S. D. J.

Judgement entered: Oct 26, 1973

Raymond F.  
 Burghardt,  
 Clerk

End of Order &  
 Judgement

note to all parties:

The inquest has been adjourned  
 by Magistrate Jacobs until 10 AM  
 December 19, 1973 Room 1602 Federal  
 Court House.

S.L. Kaufman

STATE OF NEW YORK     )  
                                   ) SS.:  
 COUNTY OF NEW YORK    )

ENNA PADIN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 83-20 Britton Avenue, Elmhurst, New York. That on the 15th day of October 1973, deponent served the within Order with Notice of Settlement upon the attorneys listed below at their respective addresses, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository maintained at 41 E. 42nd Street, New York, N.Y. 10017 under the exclusive care and custody of the United States Post Office Department within the State of New York.

Finkelstein, Benton & Soll  
 Attorneys for defendant,  
 Meyer Gold  
 515 Madison Avenue  
 New York, N. Y. 10022

Borden & Ball  
 Attorneys for defendant,  
 Prel Corporation  
 345 Park Avenue  
 New York, N.Y. 10022

*Enna Padin*

Sworn to before me this  
 15th day of October 1973.

STANLEY L. KATZMAN  
 Notary Public, State of New York  
 No. 61-7100100  
 Commission Expires March 30, 1974

EXHIBIT J - NOTICE TO TAKE DEPOSITION DATED  
OCTOBER 9, 1973  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

57a

-----x  
FANNY HANDEL,

Plaintiff

NOTICE TO TAKE  
DEPOSITION

-against-

72 Civ. 3901 (DBB)

MEYER GOLD and PREL CORPORATION,

Defendants  
-----x

S I R S :

PLEASE TAKE NOTICE that plaintiff will take the deposition of the below-named witness and the below-named party at the office of Kaufman, Taylor, Kimmel & Miller, Esqs., 41 East 42nd Street, New York, New York 10017, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or some other officer authorized by law to administer oaths, as follows:

<u>Witness</u>	<u>Date</u>	<u>Time</u>
Jacob Burstyn c/o Prel Corporation Park 80 Plaza 1 Saddlebrook, N. J.	October 30, 1973	10:00 A.M.
Prel Corporation by Jacob Burstyn, an officer	October 30, 1973	11:30 A.M.

Said deponents are requested to produce at the same time and place, all files, papers, contracts, agreements, correspondence, records, memoranda, diaries, stockholders lists, ownership records and other documents in your possession, custody or control which refer or rebate in any way to any and all acquisitions, ownership, receipts, purchases, dispositions and/or sales of Prel stock by, to and/or from MEYER GOLD from June 1, 1971 to March 30, 1972 or which relate in any way to the subject matter of the above

captioned lawsuit.

Dated October 9, 1973

New York, N. Y.

Yours etc.,

KAUFMAN, TAYLOR, KIMMEL &  
MILLER  
Attorneys for plaintiff

by Stanley K. Kaufman  
A Member of the Firm  
41 E. 42nd Street  
New York, N. Y. 10017

TO:

BORDEN & BALL  
Attorneys for defendant  
Prel Corporation  
345 Park Avenue  
New York, N. Y. 10022

FINKELSTEIN, BENTON & SOLL  
Attorneys for defendant  
Meyer Gold  
515 Madison Avenue  
New York, N. Y. 10022

STATE OF NEW YORK

SS.:

COUNTY OF NEW YORK )

59a

ENNA PADIN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 83-20 Britton Avenue, Elmhurst, New York. That on the 17th day of October 1973 deponent served the within Notice to Take Deposition upon the attorneys listed below at their respective addresses, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository maintained at 41 E. 42nd Street, New York, N.Y. 10017 under the exclusive care and custody of the United States Post Office Department within the State of New York.

BORDEN & BALL  
345 Park Avenue  
New York, N. Y. 10022

FINKELSTEIN, BENTON & SOLL  
515 Madison Avenue  
New York, N. Y. 10022

*Enna Padin*

Sworn to before me this  
17th day of October, 1973.

*Stanley J. Kaufman*  
Stanley J. Kaufman  
Notary Public, State of New York  
No. 1117, Exp. 12/31/75  
County of New York, City of New York  
Commission Expires March 22, 1976

EXHIBIT K - LETTER FROM STANLEY L. KAUFMAN TO FINKELSTEIN,  
BENTON AND SOLL, DATED OCTOBER 24, 1973

October 24, 1973

Finkelstein, Benton & Soll  
515 Madison Avenue  
New York, N. Y. 10022

Re: Fanny Handel v. Meyer Gold and  
Prel Corporation

Dear Sirs:

The depositions scheduled for October 30th has been  
adjourned tentatively to November 5th at the office of  
Prel Corporation, Saddlebrook, New Jersey.

Yours truly,

KAUFMAN, TAYLOR, KIMMEL & MILLER

by

Stanley L. Kaufman

SLK:ep

EXHIBIT L-LETTER FROM STANLEY L. KAUFMAN TO FINKELSTEIN,  
BENTON AND SOLL, DATED NOVEMBER 1, 1973

November 1, 1973

Finkelstein, Benton & Soll  
515 Madison Avenue  
New York, N. Y. 10022

Re: Fanny Handel v. Meyer Gold and  
Prel Corporation

Dear Sirs:

The deposition tentatively scheduled for November 5th  
has been adjourned without a date.

Yours truly,

KAUFMAN, TAYLOR, KIMMEL & MILLEN

by  
Stanley L. Kaufman

SLK:ep

EXHIBIT M-LETTER FROM STANLEY L. KAUFMAN TO FINKELSTEIN,  
BENTON AND SOLL DATED DECEMBER 3, 1973

December 3, 1973

Finkelstein, Benton & Soll  
515 Madison Avenue  
New York, N. Y. 10022

Re: Fanny Handel v. Meyer Gold and  
Prel Corporation - 72 Civ. 3901 (DBB)

Dear Sirs:

This is to advise you that the adjourned deposition of  
Jacob Burstyne will take place at 11:00 A.M., on December 5,  
1973 in the office of Prel Corporation, Saddlebrook, New Jersey.

This will further advise that an inquest will take  
place at 10:00 A.M., December 19, 1973, before Magistrate Jacobs,  
in Room 1602 of the United States District Court, Foley Square,  
New York City 10007.

Very truly yours,

KAUFMAN, TAYLOR, KIMMEL & MILLER

by  
Stanley L. Kaufman

SLK:ep

EXHIBIT N-ORDER OF JUDGE BONSAI ENTERED OCTOBER 26, 1973 WITH  
 NOTICE OF ENTRY  
 UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----x  
 FANNY HANDEL,

Plaintiff

NOTICE OF ENTRY

-against-

72 Civ. 3901 (DBB)

MEYER GOLD and PREL CORPORATION,

Defendants  
 -----x

S I R S :

PLEASE TAKE NOTICE that the within is a true copy of an  
 order and judgment duly entered in the office of the clerk of the  
 within named court on October 26, 1973.

Dated: December 5, 1973  
 New York, N. Y.

Yours etc.,

TO:

KAUFMAN, TAYLOR, KIMMEL &  
 MILLER  
 Attorneys for plaintiff

FINKELSTEIN, BENTON & SOLL  
 Attorneys for defendant,  
 Meyer Gold  
 515 Madison Avenue  
 New York, N. Y. 10022

by Stanley L. Kaufman  
 A Member of the firm  
 41 E. 42nd Street  
 New York, N. Y.

BORDEN & BALL  
 Attorneys for defendant,  
 Prel Corporation  
 345 Park Avenue  
 New York, N. Y. 10022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
FANNY HANDEL,

Plaintiff

72 Civ. 3901 (DBB)

-against-

ORDER

MEYER GOLD and PREL CORPORATION,

Defendants

Plaintiff having moved for an order pursuant to Rule 37(d) Fed. Rules of Civil Procedure striking defendant MEYER GOLD's Answer for his failure to answer plaintiff's interrogatories and directing said defendant to answer said interrogatories; and the court by order dated June 7, 1973 having entered an order granting the relief requested; and defendant GOLD having failed to serve or file answers to said interrogatories; and the Clerk of this Court having on October 5, 1973 certified said defendant's failure to answer said interrogatories, and plaintiff having moved on October 15, 1973 for (a) a judgment by default against said defendant; (b) an inquest to determine the amount of damages; and (c) an award of attorneys' fees to plaintiff pursuant to Rule 37, FRCP; and defendant GOLD having failed to appear upon the hearing of said motion on October 15, 1973;

NOW, upon the affidavit of STANLEY L. KAUFMAN, sworn to October 5, 1973; upon defendant, GOLD's failure to appear as aforesaid; and upon all prior proceedings herein; it is

ORDERED, that judgment by default be entered for plaintiff on behalf of the nominal defendant, PREL CORPORATION; and it is further

ORDERED, that an inquest be held before Magistrate Jacobs  
 on November 29, 1973  
 at 10 A.M., in Room 1602 of the United States District Court,  
 Foley Square, New York City, to determine the amount of damages  
 for which the plaintiff shall have judgment and the amount of  
 attorneys' fees to be awarded to plaintiff against said defendant,  
 pursuant to Rule 37, FRCP.

Dated: October 23, 1973.

New York, N.Y.

(SGD) Dudley B. Bonsal  
 U. S. D. J.

Judgement entered: Oct 26, 1973

Raymond F.  
 Burghardt,  
 Clerk

End of Order &  
 Judgement

Note to all parties:

The inquest has been adjourned  
 by Magistrate Jacobs until 10 AM  
 December 19, 1973 Room 1602 Federal  
 Court House.

S.L. Kaufman

Finkelstein, Benton & Soll  
Attorneys for defendant,  
Meyer Gold  
515 Madison Avenue  
New York, N.Y. 10022

Enna Padin

REGINA V. SOSINSKI  
Notary Public, State of New York  
No. 0061054  
Qualified in Queens County  
Commission Expires March 30, 1974

RECEIVED & RECORDED  
REGISTER'S OFFICE  
ESSEX COUNTY, N.J.UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK7 9 41 AM '74  
H. J. [unclear]  
REGISTERUS District Court  
Filed  
Jan 17, 1974  
SD of NY

FANNY HANDEL,

Plaintiff

JUDGMENT

-against-

Civ. 3901 (DBB)

MEYER GOLD and PREL CORPORATION,

Defendants

#74 082

By order dated October 23, 1973 the Court directed judgment for plaintiff on behalf of the nominal defendant PREL CORPORATION against defendant GOLD and directed an inquest before Magistrate Martin D. Jacobs to determine the amount of damages and the amount of attorneys' fees to be awarded pursuant to Rule 37 F.R.C.P. The inquest having been held before Magistrate Jacobs and his Report, duly rendered and dated January 2, 1974 having been duly approved by the Court by order of Honorable Dudley B. Bonsal, District Judge dated January 8, 1974, it is

Ordered, Adjudged and Decreed that PREL CORPORATION recover from the defendant MEYER GOLD the sum of \$150,000 together with prejudgment interest from January 1, 1972 at 6 per cent in the amount of \$18,000, together with attorneys' fees in the amount of \$1,000, the total amount of this judgment being \$169,000, with interest from the date of entry of this judgment as provided by law and costs to be taxed; and it is further

Ordered, Adjudged and Decreed that plaintiff FANNY HANDEL recover from the defendant MEYER GOLD the costs of this action to be taxed; and it is further

Ordered, Adjudged and Decreed that the Court retains

Me. [unclear]  
Jan 18, 1974

jurisdiction of this action for such proceedings as may be necessary or proper for the implementation and enforcement of this judgment and for the purpose of awarding attorneys for the plaintiff a reasonable attorney's fee and such disbursements as may be approved by the Court.

Dated: New York, New York  
January 17, 1974

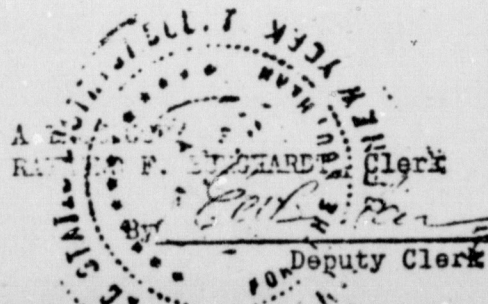
*Rudley B. Bonnal*

U. S. D. J.

*MDJ* *cc. S. Magaw*

*Judgment entered: Jan. 18, 1974*

*Raymond F. Burghard*  
CLERK



## EXHIBIT P-POSTCARD FROM CLERK'S OFFICE, U.S. DISTRICT COURT

CLERK'S OFFICE  
United States District Court  
FOR THE

Fanny Handel

vs.

Meyer Gold &amp; Prel Corp

Civil Action No. 72 C.3901

There was entered on the docket 1-18-74 , 19

an order (judgment) -----#74,082 Entered.

● A.O. NO. 143

F x N

Raymond F. Burghardt. , CLERK

EXHIBIT Q-NOTICE TO TAKE DEPOSITION DATED FEBRUARY 6, 1974 ' 70a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FANNY HANDEL,

Plaintiff

NOTICE TO TAKE  
DEPOSITION

-against-

72 Civ. 3901 (DBB)

MEYER GOLD and PREL CORPORATION,

Defendants

S I R S:

PLEASE TAKE NOTICE that plaintiff will take the deposition of the defendant MEYER GOLD, at 10:30 A.M., on February 21, 1974, at the office of KAUFMAN, TAYLOR, KIMMEL & MILLER, 41 East 42nd Street, Room 1207, New York, New York, upon oral examination, pursuant to Rule 69 of the Federal Rules of Civil Procedure in aid of the judgment against said MEYER GOLD, entered January 18, 1974, before a notary public or some other officer authorized by law to administer oaths.

Dated: New York, N. Y.  
February 6, 1974

Yours etc.,

KAUFMAN, TAYLOR, KIMMEL & MILLER  
Attorneys for plaintiff

TO:

BORDEN & BALL  
Attorneys for defendant  
PREL CORP.  
345 Park Avenue  
New York, N. Y. 10022

by Stanley L. Kaufman  
A Member of the Firm  
41 East 42nd Street  
New York, N. Y. 10017

FINKELSTEIN, BENTON & SOLL  
Attorneys for defendant  
MEYER GOLD  
515 Madison Avenue  
New York, N. Y. 10022

MEYER GOLD,  
Defendant  
159 Conant Street  
Hillside, New Jersey

REGISTERED MAIL	
Value \$ 1,000	Special \$ 60
Reg. Fee \$ 95	Return \$ 15
Handling \$	Residual \$
Charge	Delivery
Postage \$ 07	AS MAIL
FROM	MAILING OFFICE
TO	MEYER GOLD
41 E 42 ST	NYC 10017
159 CONANT ST	HILLSIDE NJ 07031
157	07201

STATE OF NEW YORK )  
                               ) SS.:  
 COUNTY OF NEW YORK )

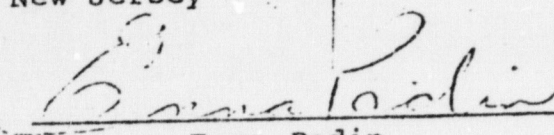
ENNA PADIN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 83-20 Britton Avenue, Elmhurst, New York. That on the 6th day of February 1974, deponent served Notice to Take Deposition upon the attorneys listed below at their respective addresses, the addresses designated by said attorneys for that purpose and upon defendant Meyer Gold, by Registered Mail, Return Receipt Requested, Special Delivery, at the address listed below by depositing a true copy of same at the Post Office at 45th Street & Lexington Avenue, New York, New York and depositing a true copy of same to said attorneys in a postpaid properly addressed wrapper, in an official depository maintained at 41 East 42nd Street, New York, New York 10017 under the exclusive care and custody of the United States Post Office Department within the State of New York.

BORDEN & BALL  
 Attorneys for defendant  
 PREL CORPORATION  
 345 Park Avenue  
 New York, N. Y. 10022

FINKELSTEIN, BENTON & SOLL  
 Attorneys for defendant  
 MEYER GOLD  
 515 Madison Avenue  
 New York, N. Y. 10022

MEYER GOLD,  
 Defendant  
 159 Conant Street  
 Hillside, New Jersey

Sworn to before me this  
 6th day of February, 1974.

  
 Enna Padin

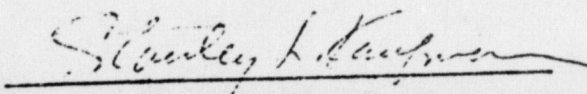


EXHIBIT R-LETTER TO MEYER GOLD DATED FEBRUARY 6, 1974

February 6, 1974

Mr. Meyer Gold  
159 Conant Street  
Hillside, New Jersey

Re: Fanny Handel  
Vs: Meyer Gold and Prel Corporation  
72 Civ. 3901 (DBB)

Dear Mr. Gold:

I enclose a corrected copy of the notice to take your deposition at 10:30 A.M., on February 21, 1974. The previous notice which we sent you a few hours ago was mistakenly captioned in another case.

Yours truly,

KAUFMAN, TAYLOR, KIMMEL & MILLER

by

Enna Padin  
Secretary to Mr. Kaufman

Encl.  
Reg. Mail  
Ret. Rec. Req.  
Spec. Del.

## EXHIBIT S - POSTAL RECEIPTS

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)  
(Additional charges required for these services)☐ Show to whom, date and address  
where delivered☐ Deliver ONLY  
to addressee

## RECEIPT

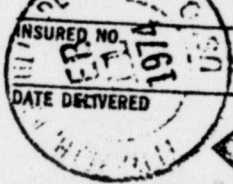
Received the numbered article described below

REGISTERED NO.

385

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

CERTIFIED NO.



①

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

②

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

③

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED E  
(Additional charges required for these services)☐ Show to whom, date and address  
where delivered☐ Delive.  
to addressee

## RECEIPT

Received the numbered article described below

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

CERTIFIED NO.

746774000

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

DATE DELIVERED

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)



EXHIBIT T - CERTIFICATE OF JUDGMENT

CERTIFICATION OF JUDGMENT

3/1/74

CIV 101 (4-67)

United States District Court

FOR THE

Southern District of New York

CIVIL ACTION FILE NO. 72-3901

anny Handel,

Plaintiff,

vs.

eyer Gold and Prel Corporation,

Defendants.

JUDGMENT

# 74,082

CERTIFICATION OF JUDGMENT FOR  
REGISTRATION IN ANOTHER DISTRICT

I, Raymond F. Burghardt

, Clerk of the United States District Court for

the Southern

District of New York

do hereby certify the annexed to be a true and correct copy of the original judgment entered in the  
above entitled action on January 18, 1974, as it appears of record in my office,  
and that No notice of appeal from the said judgment has been filed in my  
office, and the time for appeal commenced to run on January 18, 1974,  
upon the entry of the judgment.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said  
Court this 1st, day of March, 1974.

Raymond F. Burghardt, Clerk

By *Thomas M. Wright* Deputy Clerk

\* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [insert date] upon the entry of [If no motion of the character described in Rule 4(a) F.R.A.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [insert date] and the judgment was affirmed by mandate of the Court of Appeals issued [insert date]" or "a notice of appeal from the said judgment was filed in my office on [insert date] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [insert date]", as the case may be.

EXHIBIT U-LETTER FROM WILLIAM B. KAUFMAN TO  
STANLEY L. KAUFMAN

KAUFMAN AND KAUFMAN  
COUNSELLORS AT LAW  
HERSH TOWER BUILDING  
ELIZABETH, N.J. 07201  
(201) 355-8050

JARON KAUFMAN  
WILLIAM B. KAUFMAN  
RICHARD M. SALSBERG  
MEYER L. ROSENTHAL  
AVRAM S. EULE

March 13, 1973

Stanley L. Kaufman, Esq.  
Kaufman, Taylor, Kimmel and Miller, Esqs.  
41 East 42 Street  
New York, New York 10017

Re: Fanny Handel vs. Meyer Gold and Prel Corp. -  
Docket No. 72 Civ. 3901 - K&K File 5891-F

Dear Mr. Kaufman:

We have in hand a certification from the accountant who acted for Gold and worked with Prel stating that Gold made no gain as a result of the transaction involved. Will such C.P.A. certification satisfy you? Please let us know.

Yours very truly,

KAUFMAN and KAUFMAN

*William B. Kaufman*  
WILLIAM B. KAUFMAN (RM)

WBK:rm

cc: <sup>Mr.</sup> Meyer Gold

EXHIBIT V - LETTER FROM STANLEY L. KAUFMAN TO  
WILLIAM B. KAUFMAN

March 15, 1973

William B. Kaufman, Esq.  
Kaufman and Kaufman  
Hersh Tower Building  
Elizabeth, New Jersey 07201

Re: Handel v. Meyer Gold and Prel Corp.  
72 Civ. 3901 - K&K File 5891-F

Dear Mr. Kaufman:

In answer to yours of March 13, 1973, it is our experience that in practically every 16(b) case the defendant and his accountants seem to believe they made no 16(b) profit. Accountants are not qualified to make 16(b) determinations.

After Mr. Gold has provided factual answers to the interrogatories attached to the complaint and given us copies of basic documents, we may be in a position to determine whether or not he has any liability.

Yours truly,

Stanley L. Kaufman

SLK/is

## AFFIDAVIT OF STEPHEN SUSSMAN IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

FANNY HANDEL, :

Plaintiff, : 72 Civ. 3901 (DBB)  
K.T.D.

-against- :

ANSWERING AFFIDAVIT

MEYER GOLD and PREL CORPORATION, :

Defendants. :

-----x

STATE OF NEW YORK )

) SS.:

COUNTY OF NEW YORK)

STEPHEN SUSSMAN, being duly sworn, says:

1. I am associated with the firm of BORDEN & BALL, attorneys of record for nominal defendant, PREL CORPORATION, and make this affidavit in opposition to the motion of defendant, MEYER GOLD ("Gold"), for an order to vacate the default judgment entered herein and to stay all proceedings in connection with the enforcement of such judgment.

2. The moving affidavit of Irwin S. Lampert recites (par. 7) that Gold appeared in this action and answered by his then attorneys, FINKELSTEIN, BENTON & SOLL, ESQS. Upon information and belief, no formal substitution of attorneys has been entered in this action on behalf of Gold.

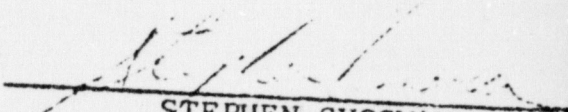
3. It is my understanding that the circumstances culminating in the entry of the judgment herein will be recited in full in the answering papers of the attorneys for plaintiff here

Accordingly, such circumstances will not be repeated in this affidavit.

4. It is admitted in the moving papers that Gold was represented in this action by counsel. The moving papers herei fail in any manner to suggest, in view of such representation, any mistake or excusable neglect sufficient to satisfy the requirements for opening default judgments set forth in the Federal Rules of Civil Procedure.

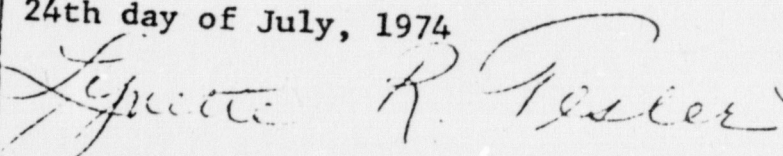
5. For the foregoing reasons, Gold's application to vacate the judgment entered herein should in all respects be denied.

The statements made in the foregoing affidavit are true to my own knowledge except those stated on information and belie and as to those I believe them to be true.

  
STEPHEN SUSSMAN

Sworn to before me this

24th day of July, 1974

  
LYNETTE R. TESLER  
NOTARY PUBLIC, State of New York  
No. 31-4518452  
Qualified in New York County  
Commission Expires March 30, 1976

SCHEDULED DEPOSITION OF MEYER GOLD

79a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X  
FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.  
-----X

:  
:  
:  
: 72 CIV. 3901  
(DEB)  
:  
:

Deposition of defendant MEYER GOLD,  
taken by plaintiff pursuant to notice dated  
February 6, 1974, at the offices of Kaufman  
Taylor Kimmel & Miller, Esqs., 41 East 42nd  
Street, New York, N.Y. 10017, on February 21,  
1974, at 10:55 a.m., before Russell M. Graves,  
a Certified Shorthand Reporter and Notary  
Public of the State of New York.

*Commerce Reporting Company, Inc.*  
*Forty One East Forty Second Street*  
*New York, New York 10017*

CERTIFIED SHORTHAND REPORTERS *DL 100* *MU 2-7790* A COMPLETE REPORTING SERVICE SINCE 1935

## APPEARANCES:

KAUFMAN TAYLOR KIMMEL & MILLER, ESQS.,  
Attorneys for plaintiff  
41 East 42nd Street  
New York, N.Y. 10017  
BY: STANLEY KAUFMAN, ESQ.,  
Of Counsel

oOo

MR. KAUFMAN: Mr. Reporter, let the record show that the defendant, Meyer Gold, is not present, although the time is 10:55 a.m. and the deposition was called for 10:30 a.m.

The defendant, Meyer Gold, was served by registered mail with the notice to take deposition at 10:30 a.m. on February 21, 1974. He was served on February 6, 1974 and his attorneys, Finkelstein Benton & Sole, were served on the same day by mail.

This morning at 9:30 I received a telephone call from defendant Gold's New Jersey attorney, William Kaufman, rather from William Kaufman's secretary who advised that neither Mr. Kaufman nor Mr. Gold would attend the deposition today.

Let the record also show that we have return receipts from Meyer Gold dated February 11, 1974, indicating his receipt by registered mail of the notice to take deposition.

(Time noted: 11:00 a.m.)

COMMERCE REPORTING CO.  
150 NASSAU STREET, NEW YORK, N.Y. 10038 - WOrk 4-3567

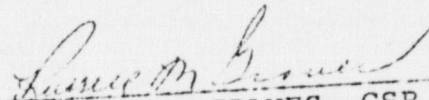
C E R T I F I C A T E

STATE OF NEW YORK )  
                              : ss  
COUNTY OF NEW YORK)

I, RUSSELL M. GRAVES, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I appeared at the offices of Kaufman Taylor Kimmel & Miller, Esqs., 41 East 42nd Street, New York, N.Y. 10017, on February 21, 1974, at 10:55 a.m., to report the deposition of the defendant MEYER GOLD, and that neither defendant nor his counsel appeared.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of March 1974.

  
\_\_\_\_\_  
RUSSELL M. GRAVES, CSR

REPORT OF MAGISTRATE JACOBS DATED JANUARY 1, 1972

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

FANNY HANDEL,

Plaintiff,

-against-

MEYER GOLD and PREL CORPORATION,

Defendants.

- - - - - x

By order dated October 23, 1973 Judge Bonsal directed judgment for plaintiff on behalf of the nominal defendant Prel Corporation against defendant Gold, and directed an inquest before me to determine the amount of damages and the amount of attorneys' fees to be awarded plaintiff pursuant to Rule 37, F.R.C.P.

A hearing was held on December 19, 1973. Notice of the inquest was given to the attorneys for defendant Gold (Ex. 1) but neither the defendant nor his attorneys appeared. Submitted with this report are a transcript of the hearing consisting largely of documentary evidence (Exs 1 through 12) and statements by plaintiff's attorney.

After notice to Gold's attorneys the deposition of a witness Burstyn (chief executive officer of the corporation) was taken on December 5, in order to obtain facts and documents for the inquest (4). Plaintiff's attorney advises that most of the documentary evidence received at the hearing was obtained from the corporation and Burstyn, none from Gold.

I.

The complaint, based upon a violation of Section 16(b) of the Securities Exchange Act of 1934 (15 U.S.C. §79-p (b)), alleges that on September 16, 1971 defendant Gold was the beneficial owner of more than 10 per cent of Prel's outstanding stock and within less than six months sold stock on which he realized a profit "the amount thereof being unknown to plaintiff" (Par 8). The answer denies any liability; alleges, among other things, that the only stock sold was "more than six months after he acquired any stock of Prel"; and denies that any profit was made as a result of any such sale (pars 7 and 8).

Plaintiff served certain interrogatories dated

September 11, 1972 requesting as to each acquisition of stock details including the number of shares, the consideration paid, and the date of payment (C-1) and as to each disposition by defendant Gold of shares details including the number of shares, the consideration received, and the date of receipt (C-2). Defendant Gold failed to answer the interrogatories and by order dated June 7, 1973 Judge Bonsal directed him to answer the interrogatories and that the answer would be stricken unless they were answered by July 2, 1973.

The default judgment dated October 23, 1973 recites that defendant Gold failed to serve or file answers, failed to appear on plaintiff's motion pursuant to Rule 37-d to strike his answer for failure to answer the interrogatories, and directed an inquest before the undersigned.

## II.

At the hearing prima facie proof was offered as to the following:

On September 30, 1971 the corporation had outstanding 2,057,500 shares (Ex 12).

In September 1971 Gold was the owner of 265,647 shares, being in excess of 10 percent. This ownership appears from (1) the memorandum of sale dated September 16, 1961 (Ex 2) providing that Prel had sold to Union, which had assigned to Gold, 10,000 shares at \$7 per share (p. 4 of agreement) and (2) the receipt by Gold on September 16, 1971 of 255,647 shares (Ex 5); the issuance by the corporation in connection with the transfer to it of certain properties by Gold and others of 255,647 shares to Gold (Ex 3, p. 5; Tr. 7); and a corporate resolution dated September 13, 1971 authorizing the issuance to Gold of 255,647 shares.

B

There was proof that Gold made two sales of stock. As appears from an agreement dated September 13, 1971 (Ex 7), Gold agreed to sell to one Burstyn 55,647 shares for \$565,000 or about \$10 per share. If this sale of 55,647 to Burstyn is matched in part against the 10,000 shares purchased at \$7 per share (Ex 2) there would be a profit of \$3 per share on 10,000 shares or \$30,000. How-

ever, plaintiff claims that the realized profit should be determined by matching the purchase of 10,000 shares at \$7 per share (Ex 2) against a sale to one Sternberg by Gold of 10,000 shares on or about December 29, 1971.

Prima facie proof of the purchase by Sternberg of 10,000 shares is shown by the following: Sternberg by letter dated December 29, 1971 to Prel (Ex 8) recites that he has an assignment from Gold of his right to purchase 10,000 shares at \$7 per share and acknowledges that the stock is being acquired for investment. Quotation sheets of the over the counter market (Ex 9) show that the market on December 29 was 22 bid - 23 asked. Thus, the short-swing profit to Gold would be \$15 per share (\$22 less \$7) which on 10,000 shares would be \$150,000. A letter dated January 19, 1972 from an officer of Prel authorizes the delivery to Sternberg of 10,000 shares (Ex 11). Plaintiff's attorney acknowledges that he has no direct proof of what Gold received on the sale to Sternberg but relies on the inferences from the documents and circumstances.

## III.

It is well recognized that Section 16-b will be given a broad interpretation so as to accomplish its legislative purpose (Adler v. Klawans, 267 F.2d 840 (2d Cir. 1959)).

In Gratz v. Cloughton, 187 Fed. 2d 46 (2d Cir.1951) cert. den. 341 U.S. 920 (1951) the Court said "when damages are at some unascertainable amount below an upper limit and when the uncertainty arises from the defendant's wrong, the upper limit will be taken as the proper amount".

In Stella v. Graham-Paige Motors, 232 Fed. 2d 299 (2d Cir. 1956), cert. den. 352 U.S. 831 the Court said "Elsewhere we have held that, once a cestui shows a breach of such a duty and prima facie proof of a maximum amount of profits made by the fiduciary, then the fiduciary has the burden of proving to what extent the profits were less than this maximum - especially where the fiduciary's breach is responsible for the difficulty or impossibility of proving the amount with certainty - and that consequently, if the fiduciary's proof leaves the amount uncertain, judgement goes against him for the maximum figure".

In Roth v. The Fund of Funds Ltd., 405 Fed. 2d 431 (2d Cir. 1968) the Court said "The Fund also asserts that the District Court erred in granting summary judgment because there were material issues of fact as yet unresolved. The only such issue as to which the Fund raises any substantial point is the net amount of profit realized from the challenged transaction. However, this figure was uniquely within the knowledge of the Fund".

The present situation is most unusual in that Gold has failed to divulge any information, even at the inquest, notice of which was given to his counsel, and plaintiff was compelled to rely on documentary evidence and the inference to be drawn from them. It is believed that plaintiff has established a prima facie case that a short-swing profit in the amount of \$150,000 was realized on the sale of 10,000 shares to Sternberg.

Plaintiff's position is reinforced by Gold's failure to comply with the Court's order dated June 7, 1973 for answers to interrogatories and the power of the Court to impose sanctions. Under Rule 37(b)(A) the sanctions which the Court may impose for failure to comply with a

discovery order embrace an order that "the matters regarding which the order were made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order".

Pre-judgment interest is usually awarded as to 16(b) profits (Magida v. Continental Can Co., 231 Fed. 2d 843, 848 (2d Cir. 1956) cert. den. 351 U.S. 972; Blau v. Mission Corp. 212 Fed. 2d 77 (2d Cir. 1954) cert. den. 347 U.S. 1016 (1954)). Plaintiff should be allowed interest at six percent since January 1, 1972 as requested by him.

#### IV.

Under Rule 37(a)(4) the Court on an order compelling discovery may require the party whose conduct necessitated the motion to pay reasonable expenses incurred including attorneys' fees unless the Court finds that the opposition to the motion was "substantially justified". Rule 37(b), in addition to the particular sanctions set forth, provides that "In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party fail-

ing to obey the order ---- to pay the reasonable expenses, including attorneys' fees, caused by the failure" to comply with a discovery order.

Plaintiff's attorney stated at the hearing that if Gold had answered the interrogatories he would not have had to take the deposition of Burstyn (5). Moreover, it is clear that forthright answers to the interrogatories would have clarified the nature of the transactions and the profit realized. We have a clear situation in which Gold frustrated the discovery process and in which the Court should exercise its discretion to award expenses under Rule 37.

Plaintiff's counsel has submitted an affidavit sworn to December 18, 1973 setting forth the time (31 hours) which he had to spend in effort to obtain discovery. It is believed that an award of \$1,000 should be made for the expenses incurred.

V.

Accordingly, it is recommended that judgment be

entered for Plaintiff on behalf of Prel Corporation in the amount of \$151,000 together with interest at 6 per-cent from January 1, 1972.

Dated: New York, New York  
January 2, 1974

Respectfully submitted,  
s/ Martin D. Jacobs  
Martin D. Jacobs  
United States Magistrate

Copy of this report has been mailed to Plaintiff's attorney.

DECISION OF KEVIN T. DUFFY, U.S. DISTRICT COURT JUDGE  
DECISION

The Motion to vacate the default judgment pursuant to Rule 60(b) FRCP; is denied. The persistence of the defendant in ignoring the orders of this court, directed both to him and to his attorneys, constituted a blatant disregard for the process of justice. While the size of the judgment is large, the record in this case demonstrates that the plaintiff established a prima facie case before Magistrate Jacobs and that the default was not due to mistake or excusable neglect.

So Ordered:

July 29, 1974

---

KEVIN T. DUFFY  
U.S. District Court Judge



US COURT OF APPEALS- SECOND CIRCUIT  
Index No.HANDEL,  
Plaintiff-

against

GOLD & PREL CORP.,  
Defendants.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at  
250 West 146th Street, New York, New York  
That on the 9th day of December 1974 at \*

deponent served the annexed

Appendix

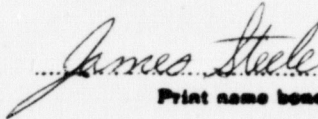
upon

\*

the in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 9th  
day of December

19 74



Print name beneath signature

JAMES STEELE

\* Borden &amp; Ball- 345 Park Ave., New York

\* Kaufman, Taylor, Kimmel &amp; Miller, - 41 E. 42nd St., NY

ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 0418050  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975